JOHN F. SATTERLEE, PLAINTIFF IN ERROR *vs.* ELIZABETH MATTHEWSON, DEFENDANT IN ERROR.

S. and M. held land in Luzerne county, Pennsylvania, in common, under a Connecticut title. A division of the land was made between them, and S. became the tenant of M. of his part of the land thus set off in severalty, under a lease, to be terminated on a notice of one year. S. afterwards obtained a Pennsylvania title to the land leased to him by M. and on a trial in an ejectment for the land, brought by M against S., the court of common pleas of Bradford county, Pennsylvania, held that S. having held the land as tenant of M., could not set up a title against his landlord. Upon a writ of error to the supreme court of Pennsylvania in 1825, it was held that "the relation between landlord and tenant could not exist between persons ho ding under a Connecticut title." The legislature of Pennsylvania, on the 8th of April 1826, passed an act declaring that "the relation of landlord and tenant should exist and be held as fully and effectually between Connecticut settlers and Pennsylvania claimants, as between citizens of the commonwealth." The case came again before the supreme court of Pennsylvania, and the judgment of the court of common pleas of Bradford county in favour of M. the landlord, was affirmed; that court having decided that the act of assembly of the 8th of April 1826 was a constitutional act, and did not impair the validity of any contract. S. brought a writ of error to this Court, claiming that the act of the assembly of Pennsylvania, of the 8th of April 1826, was unconstitutional. Held, that the act was constitutional.

Objections to the jurisdiction of this Court have been frequently made, on the ground that there was nothing apparent on the record to raise the question whether the court from which the case had been brought, had decided upon the constitutionality of a law, so that the case was within the provisions of the 25th section of the judiciary act of 1789. This has given occasion for a critical examination of the section, which has resulted in the adoption of certain principles of construction applicable to it. One of those principles is, that if the repugnancy of a statute of a state, to the constitution of the United States, was drawn into question, or if that question was applicable to the case, this Court has jurisdiction of the cause; although the record should not in terms state a misconstruction of the constitution of the United States; or that the repugnancy of the statute of the state, to any part of that constitution, was drawn into question. [409]

There is nothing in the constitution of the United States which forbids the legislature of a state to exercise judicial functions. [413]

There is no part of the constitution of the United States which applies to a state law which divested rights vested by law in an individual, provided its effect be not to impair the obligation of a contract. [413].

In the case of Fletcher *vs.* Peck, 6 *Cranch*, 87, it was stated by the Chief Justice, that it might well be doubted whether the nature of society and of government do not prescribe some limits to the legislative power, and he asks, "if any be prescribed, where are they to be found, if the property of an individual

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fairly and honestly acquired, may be seized without compensation?" It is no where intimated in that opinion, that a state statute which divests a vested right, is repugnant to the constitution of the United States. [413]

THIS case came before the court on a writ of error to the supreme court of the state of Pennsylvania.

In 1784 or 1785, Elisha Satterlee, the father of the plaintiff in error, and Elisha Matthewson, the husband of the defendant in error, the defendant in error being the sister of Elisha Satterlee, went to a large body of land in Luzerne county, Pennsylvania, part of which was the land in controversy, and both took possession of the same, under, as is believed, a supposed title from the Susquehanna Company. They worked on the lands in partnership, the same lying on both sides of the Susquehanna river, until 1790, when it was agreed that Matthewson, who had a house on the west side of the river, should occupy the land before held in common, on that side, and become the tenant of Satterlee for his portion of the land on the said west side of the river; and Elisha Satterlee moved on the lands on the east side, on precisely the same terms: that is, that he should become the tenant of Matthewson for his portion of the land on the said east side of the river. By this arrangement each became possessed, in severalty, of the particular portion of the lands thus allotted to him, and the tenant to the other of portions of the land before held in common; and it was expressly agreed that either of the parties might put an end to the tenancy at the end of any one year; and in that case, each was to be put into possession of his own lands.

In 1805 Elisha Matthewson died, having bequeathed by his will to his widow during life, and to his children after her death, the interest he had in the said land. Elisha Satterlee repeatedly, after Matthewson's death, acknowledged the original bargain, and that he was a tenant of Matthewson's part; but he wished to buy it; he wished to give other lands for it, &c. &c.; but his sister could only sell for life, and her children were minors. In 1810, she built a house on part of the tract, and put a tenant in it; but her brother would not give her possession of the part he had in cultivation. In 1811 she made application to the land office of

Pennsylvania, and on the 7th of January 1812 took out a warrant in her name in trust for her children, and had the land surveyed, and obtained a patent for it from the commonwealth of Pennsylvania. She stated in her application, an improvement made by her husband in 1785; and paid interest to the state on the purchase moneys from the date of the improvement. After his sister's warrant, survey, and return, Elisha Satterlee purchased a Pennsylvania title commencing in 1769, and consummated by a patent from the commonwealth in 1781, which he alleged covered the land in question; but he directed the deed to be made to his son, J. F. Satterlee, the plaintiff in error; and 1813 an ejectment was instituted in the name of the son against the father, in pursuance of a plan of the father's to release him from the situation of tenant to his sister. By a law of Pennsylvania then in existence, but since repealed, a rule of reference might be entered the same day the writ was taken out, and by diligence a plaintiff might obtain a report of arbitrators, which had the effect of a judgment, before the return day of the writ.

This proceeding was, by means of the father's waiving all objections as to time and notice, so carried on, as that the son not only had judgment, but a writ of possession before the return of the writ.

J. F. Satterlee then gave to his father a lease for life of the land for the consideration of one dollar. Elizabeth Matthewson instituted an ejectment. J. F. Satterlee, in 1817, procured himself to be entered co-defendant in the suit, and his father being dead, is now sole defendant.

On the trial of the cause the defendant made title under an application of John Stoner of 3d of April 1769. Stoner conveyed to Mr Slough, who in 1780 conveyed to Joseph Wharton. A patent issued to Wharton in 1781 and he in April 1812 conveyed to the defendant. The judge of the court of common pleas of Bradford county instructed the jury, that if they found the ejectment brought by the son of J. F. Satterlee, in whose name the conveyance was taken, was actually instituted by the father, though in his son's name as agent for himself, and that the suit was all a trick, and so

conducted on purpose to prevent his sister from interfering or being heard; that he was still her tenant, as much as if no such proceeding had taken place. But if the son was the real purchaser, and the suit was instituted and conducted bona fide, and the lease to the father during life for a dollar a year was bona fide, that then E. Satterlee having been evicted by due course of law, might take a lease from him who recovered; and in that case, the relation of landlord and tenant between him and his sister was at an end, and the cause must be decided upon the respective titles of the parties. But if they found him still a tenant, he could not set up against his landlord an adverse title, purchased during his life. But he must restore his possession to his landlord, and might then institute a suit on the title he had purchased; and if it was the best, recover from his former landlord. The verdict and judgment were for Mrs Matthewson.

The case was removed by writ of error to the supreme court of Pennsylvania. On the argument of this cause before the supreme court, it was decided,—"That the relation between landlord and tenant could not exist between persons holding under a Connecticut title." And that court, in 1825, reversed the judgment of the common pleas and awarded a venire facias de novo.

Immediately after this decision, on the 8th of April 1826, the legislature of Pennsylvania passed an act, by which it was enacted, "*That the relation of landlord and tenant should exist, and be held as fully and effectually between Connecticut settlers and Pennsylvania claimants, as between other citizens of the commonwealth.*"

The ejectment depending in the court of common pleas, of Bradford county, between the plaintiff in error and the defendant, again came on for trial after the law of April 8, 1826, on the 10th of May 1826; and the judge gave in charge to the jury as follows, after stating the above recited act of assembly, to wit: "It is a general principle of law, founded on wise policy, that the tenant shall not controvert the title of his landlord, and prevent the recovery of his possession, by showing that the title of the landlord is defective. Among

the exceptions to this general rule, the supreme court of Pennsylvania have decided, that when the landlord claimed (as the plaintiff claimed on the former trial of this cause) under a Connecticut title, the case should form one of the excepted cases. The legislature have thought proper to enact the above recited law, and by it we are bound. And if the plaintiff in all other respects should be found entitled to a recovery, the mere claiming through a Connecticut title would not now deprive her of her right to a recovery."

A verdict and judgment were obtained in favour of the defendant in error, Elizabeth Matthewson.

To the charge of the judge, which is inserted at large and sent up with the record, the defendant excepted, and the judge signed and sealed a bill of exceptions.

A writ of error was taken by the defendant to the supreme court of Pennsylvania, and the following were among the errors assigned, to wit:

The court erred in charging,

1. That by the laws of Pennsylvania, the plaintiff's testator could lease the land, and that the rights of landlord do extend to him; he having claimed under a Connecticut title.

2. That the act of the 8th of April 1826 gives a right of recovery, and does away the force of the law, as declared by the supreme court in this case.

On the first of July 1827, the supreme court, after argument, affirmed the judgment of the court of common pleas. And on the 6th of July 1827, a petition and prayer for reversal was filed by John F. Satterlee, the plaintiff in error, who survived Elisha Satterlee; on the ground that the said court had decided the said act of assembly to be constitutional and valid, though he had insisted that he ought not to be affected and barred of recovery by the said act, for that the said act was not valid, and was repugnant to the constitution of the United States.

The cause was argued by Mr Eli K. Price, and Mr Sergeant for the plaintiff; and by Mr Sutherland, and Mr Peters for the defendant.

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Mr. Price, for the plaintiff, contended:

There was enough apparent on the record to sustain the appellate jurisdiction of his Court.

If in fact the act drawn in question is unconstitutional, there is sufficient on the record to give jurisdiction, because it appears that the judge who tried the cause instructed the jury that the act was binding on them as the law; in accordance with the judge's instruction was the verdict of the jury, on which judgment was rendered, and that judgment was affirmed in the supreme court of Pennsylvania, to which this writ of error was taken.

This is therefore a case to which the clause of the constitution of the United States is applicable, and which was disregarded; which is all that need appear to sustain the appellate jurisdiction of this Court. Martin *vs.* Hunter, 1 *Wheaton*, 304; Inglee *vs.* Coolidge, 2 *Wheaton*, 363; La nusse *vs.* Barker, 3 *Wheaton*, 147; Miller *vs.* Nicholls, 4 *Wheaton*, 311; Williams *vs.* Norris, 12 *Wheaton*, 124; Hickie *vs.* Starkie, 1 *Peters*, 94.

Is the act unconstitutional so far as it affects rights existing at the time of its enactment?

Of the prospective operation of the act we have nothing to say, our complaint being of the divestiture of vested rights. These were the rights of Satterlee to the possession of his estate, derived from the commonwealth, and to take the rents and profits, without liability to pay the latter or surrender the former to any landlord who as such held a Connecticut title. This was the settled law of the land by the decision in this very case, when first before the supreme court of Pennsylvania. 13 *Serg. & R.* 133. This decision was evidence of what the law of Pennsylvania had always been. At no time, therefore, did the relation of landlord and tenant exist between these parties. The claimant under the Connecticut title had no rights, and therefore was not entitled to the aid of the liberal principle, that a tenant shall not dispute the possession with his landlord, though he may hold the better title. The decree of Trenton in 1782 had settled the right to the disputed soil in the northern border of Pennsylvania, in favour of that state.

The policy thereafter pursued by that state was utterly to exterminate the Connecticut claims within her borders, at the same time that she made great sacrifices to furnish the Connecticut settlers with Pennsylvania titles, by expending her treasures to purchase releases from the holders of them. Among the penal acts to destroy the Connecticut claims were the acts of 1795 and 1802; making it highly penal and criminal to intrude under or convey a Connecticut title. 3 *Smith*, 209. 525. A more extended history of this unhappy and often bloody controversy may be found in 2 *Dall.* 304; 6 *Binn.* 467; 6 *Binn.* 57; 4 *Serg. & R.* 281, and 1 *Binn.* 110.

In the last case it was decided, that a vendor of a Connecticut title could not recover from the vendee the purchase money, because the contract being in violation of the law, the plaintiff had no rights in a court of justice. On the same salutary principle was this case first decided. But with the justice and sound legal principle of this decision, which are most apparent, we have nothing to do. It is enough, that by it the law was settled and a rule of property established. That it did establish a rule of property is most evident; but it has also been expressly decided by the supreme court of Pennsylvania. 1 *Serg. & R.* 521. Under this rule of property was Satterlee protected in the possession and enjoyment of his estate. By this act, if this judgment is affirmed, will he be dispossessed of his property, made liable to pay the rents and profits to another, and by the conversion of his possession into the possession of the landlord, for ever precluded from regaining his estate.

Does not this act then impair the obligation of a contract? The contract is the grant of a title from the state to Satterlee. Such a grant is a contract within the meaning of the constitution of the United States. Fletcher *vs.* Peck, 6 *Cranch*, 87; Dartmouth College case, 4 *Wheaton*, 518. 656. 682; Green *vs.* Biddle, 8 *Wheaton*, 1. The obligation of a contract is "the law which binds the parties to perform their undertaking." 4 *Wheaton*, 197. The undertaking of the state of Pennsylvania by her grant, to which the law bound her, was that Satterlee should *have* and *hold* the pre-

mises granted, to take and enjoy the rents and profits thereof, without liability to surrender the possession or pay the profits to any Connecticut claimant, through the relation of landlord and tenant.

By the loss of the possession, Satterlee has been unconstitutionally divested of rights, though the right of possession might remain in him. The possession gives the enjoyment of the rents and profits, which are equivalent to the land itself, and by those terms a title to the land will pass. Possession is itself a title against every body who does not exhibit a better title. It gives a home, which may be invaluable to the owner from the attachments created by long residence, or from its being the place of nativity, or the patrimony derived from a line of revered ancestors. He who is in possession, may forcibly defend that possession, nay, slay the invader of his habitation, without a breach of the peace or the commission of a crime; while he who is out of possession cannot forcibly take possession, and if he does, though he may have the right, will be dispossessed by the statutes against forcible entry and detainer.

With the title of the commonwealth in his pocket, Satterlee has by this act been denied the right of defending his possession by it. He has been obliged to confess his possession to be the possession of an alien claimant, whose it never was, and never could have been by any judicial decision that was not suicidal to the state sovereignty. He has been bound in fealty to a landlord to whom, if according to the ancient custom he had taken the oath of homage, it would have been an abjuration of his allegiance to the state; for that landlord claims, in breach of his allegiance, the title of a foreign state. Yet by this act the strong arm of the state is to be exerted to dispossess her grantee, and to deliver it over to the favoured alien claimant who had asserted a title in criminal violation of her laws. And to consummate the injustice as far as the most absolute power could do it, her courts of justice are forever to be closed against a claim on her violated and useless patent. If an individual had thus attempted to re-assume the rights he had granted, he would be met by the doctrine of estoppel. For states who have

the power to execute their arbitrary will, there is no estoppel but that which is to be found in the paramount law of the constitution, firmly enforced by an independent judiciary. If this act had given Satterlee's estate to a claimant on a title perfectly void, it could not have committed a more flagrant violation of justice and of the constitution; for this title was not only void, but could not have been otherwise than criminally asserted.

It was an attempt by the legislature to encroach upon the judicial power; was passed at the next session, in terms precisely the reverse of the decision of the court, and applied to pending suits, when probably no suit but this was pending to which it was applicable.

If the legislature can thus, by a retrospective act, divest a citizen of his estate, there is no safety for our boasted rights and liberties. It is as impossible to make laws to operate upon the past, without the usurpation of despotic power, as it is to recal the past. Law is a rule of action; but a law which did not exist when an action was performed, could not have been a rule for that action. To make a rule for it after the action is performed, is to substitute the will of the legislature for a rule, which is despotism itself; for what that will may be no man can foresee, and it is the same whether it proceeds from an American legislator or an eastern despot. The Court cannot be unmindful that legislative bodies sometimes act under the impulse of strong and sudden excitement; sometimes inadvertently; that sometimes the good intentions of the many, may be misled by the management and intriguing talent of the few; and a case has been referred to which shows that they are not always inaccessible to corrupt influences.

This Court would not suffer counsel to argue a question so plain as that a legislature could not declare what a law *was*. Ogden *vs.* Blackledge, 2 *Cranch*, 276. This act *changes* the acknowledged law for the past. It has decided that state bankrupt laws are unconstitutional in respect to contracts made previous to their passage (Sturgess *vs.* Crowninshield, 4 *Wheat.* 122); though constitutional in re-

spect to contracts made after their enactment. Ogden *vs.* Sanders, 12 *Wheat.* 261.

Retrospective laws are invalid at common law. 7 *Johns.* 477; 2 *Johns.* 263; 13 *Serg. & Rawle,* 353. Nor can property be taken away, not even for public use, without compensation. 2 *Dall.* 304; 2 *Johns.* 263; 2 *Johns. Cha. Rep.* 162; 8 *Johns.* 388. The principle being the same at common law and under the constitution, they are applicable to this case.

The recovery in ejectment is conclusive evidence of the plaintiff's right to recover in an action for the mesne profits. 2 *Johns. Rep.* 371; 2 *Dall.* 156; 2 *Burr.* 665.

If this judgment is affirmed, Satterlee will lose the rents and profits which he would have held as his own, but for the effect of the act in question.

In Green *vs.* Biddle, this Court decided laws of Kentucky to be unconstitutional which deprived the owner of a right to recover any part of the profits on a recovery of his land.

The act having brought Satterlee within the operation of the statute of limitations, if he be dispossessed by the affirmance of this judgment, it has totally deprived him of all remedy. By the loss of all remedy all right is gone. For every right it is a maxim that there is a legal remedy for its violation. The converse of this must therefore be true, and if there be no remedy there is no right.

If this Court has not decided that the destruction of all remedy by a state law is an unconstitutional act, the several judges have at least expressed such an opinion. *C. J. Marshall,* 4 *Wheaton,* 207; *Justice Washington,* 12 *Wheaton,* 271, 267; *Justice Johnson,* 286; *Justice Thompson,* 295, 301; *Justice Trimble,* 327; *Justice Story,* 8 *Wheaton,* 12; and state decisions, 5 *American Law Journal,* 520, 8 *Mass.* 423, 430, 12 *Serg. & Rawle,* 358.

Mr Sutherland, for the defendant:

The question submitted in the present case was one of great interest; not only to the defendant, but also to the free exercise of the legislative powers of the state of Pennsylvania. The question arose out of the act of the assembly of

the state, entitled "an act relating to Connecticut settlers," passed the 8th day of April 1826.

On the case as presented by the plaintiffs, the act is alleged to have been passed on the 28th, whereas it was in fact enacted into a law on the 8th of April 1826. It is therefore respectfully submitted to the Court as a preliminary point, whether they will not dismiss the writ of error for want of certainty in the date of the act; as we contend that under the decisions already made in this Court, it should *distinctly* and not by *reference* appear that a statute of a state *was* drawn in question, upon the ground of its being repugnant to the constitution of the United States, and that its decision was in favour of its validity.

But if the Court should decide that the record presents a case, so as clearly to bring the question before the Court; then it is respectfully contended, 1. That the decision of the supreme court of Pennsylvania, 13 *Sergeant & Rawle*, 133, was contrary to law. 2. That the act of the legislature of Pennsylvania, passed March 8th, 1826, was an explanatory act, and therefore constitutional. 3. That the judgment of the supreme court of Pennsylvania, which the plaintiff in error seeks to reverse, did not impair but affirmed the obligation of a valid contract, and was not against the constitution of the United States. 4. The judgment of the supreme court of Pennsylvania in the case now submitted to this Court for revision, was not made upon the authority of the act of assembly of the 8th of April 1826, but upon the known and established law of the state.

It is contended, that the first decision of the supreme court of Pennsylvania was erroneous. It appears from looking back into the early history of Pennsylvania that a number of persons emigrated from the state of Connecticut, and settled in some of the northern countries of Pennsylvania. They alleged that the charter of Connecticut, being of an older date and covering the soil in question, they were legally entitled to settle on the lands in question. Out of this dispute originated the celebrated Wyoming controversy, which produced the decree of Trenton, which went in favour of the jurisdiction of the state of Pennsylvania. A number

of laws were passed by the legislature of Pennsylvania relative to the Connecticut settlers. The most important were, what was denominated the "*intrusion* act," and the act *suspending* the operations of the statute of limitation in that region of country. The act to prevent intrusions was highly penal. The first section provided, that if any person shall take possession of, enter, intrude, or settle on any lands within the counties of Northampton, Northumberland or Luzerne by virtue or under colour of any conveyance of half share right, or any other pretended title *not derived under* Pennsylvania; he shall on conviction, &c. forfeit and pay two hundred dollars, &c. and be *subject to imprisonment not exceeding twelve months.*

The 2d section declared, that every person who shall combine, or conspire, for the purpose of conveying, possessing or settling any lands *within the limits aforesaid* under any half share, right or any pretended title as aforesaid, or for the laying out townships by persons not appointed or acknowledged by the laws of Pennsylvania, and accessaries thereto; shall forfeit and pay not less than *four hundred dollars* and not more than one thousand dollars, &c. &c. and be subject to *imprisonment at hard labour* not exceeding *eighteen months.*

The 8th section enacts, that on trials of indictments for *such intrusion*, proof, that the person indicted, entered into, intruded, settled on, or was in possession of the land, *before the time* of finding the indictment, shall be sufficient to convict thereof; unless defendant shall prove that he or she entered upon, took possession of, and settled on such land *before* the passing of the original act, 11th of April 1795.

When the case of Matthewson *vs.* Satterlee, 13 *Serg. & Rawle*, 133, came up before the supreme court of Pennsylvania, the impression, as is evident from the report of the case, upon the minds of the judges of the court, was, that the intrusion act was in full operation. For it no where appears either in the argument of counsel or the opinion of the judges, that any thing had been said about its *repeal.* The act however had been repealed. This opinion was no doubt based upon the case of Mitchel *vs.* Smith, 1 *Binn.* 110. The plaintiff there sold the defendant a tract of land, lying in

the county of Luzerne, and held by him under a deed from a committee of the Susquehanna Company, under the Connecticut title, and not derived from the authority of this commonwealth or the late proprietaries of Pennsylvania; and gave his note for $483 33 cents, payable in three years. The suit was on the note. The principal question, says the court in that case, is whether this be a legal or *illegal consideration* for the bill, and whether the contract for the sale and purchase of this land is a *violation of the laws* of this commonwealth, so tainting the whole transaction, as that this court cannot legally afford their aid to carry the contract into execution. The court say, the mischief intended to be remedied by the act of the 11th of April 1795 (the intrusion act) was of a grievous nature. A warfare had been carried on between the claimants of land under Connecticut and the claimants under Pennsylvania for many years, and many lives were lost in the contest; the court then go on to state that the decree of Trenton being in favour of Pennsylvania, "the intrusion act" was passed to enforce the rights of that state, and finally decide that the action for the note could not be sustained.

But the intrusion act having been repealed, the case of Mitchel *vs.* Smith is now no authority; and independent of the repeal of the intrusion act, the decision of the court in 12 *Serg. & Rawle* was erroneous, because the penalties of that law were never extended to apply to a case like Matthewson's. The 8th section, by special provision, excludes Matthewson from the operation of it. "No person is to be liable to the severities of the law who could prove that he entered upon and took possession of, or settled on such lands *before the passing of the act of the 11th of April* 1795. Matthewson took possession as far back as 1784 or 1785, ten or eleven years before the existence of the intrusion act.

In the course of a short time after the repeal of the intrusion act, the law suspending the operation of the statute of limitation in this section of the commonwealth, was also repealed. This was the last and only act remaining upon the statute book, to the prejudice of the Connecticut settlers. So that if Matthewson had not ever settled upon these lands, and

leased them to Satterlee, *long prior* to these enactments, framed for the purpose of *preventing* any more intrusion from the settlers of New England; yet, their total and unqualified repeal, afterwards, would have been sufficient to entitle him to the benefits of all the laws to which other persons settling in Pennsylvania were entitled. Under this view of the facts connected with this case, we have but one mode left for accounting for the decision of the supreme court of Pennsylvania, and that is the one heretofore adverted to; by supposing that the repeal of "the intrusion act," as well as "the act suspending the operation of the limitation act," had not reached them. Certainly their repeal is not to be collected either from the argument or opinion of the court, in the case of Satterlee *vs.* Matthewson, 13 *Sergeant & Rawle.* It being therefore, evidently, an oversight on the part of the court, we contend that the act of the 8th of April 1826, became necessary to effectuate justice between the parties, and to declare what was really the law at the time the erroneous decision of the court was pronounced. We therefore maintain the position, that the act of the 8th of April is constitutional.

Indeed it is nothing more than a declaratory or explanatory act. It was but a re-enactment of what was understood in that part of the state to have been the law from the year 1785 down to 1813, and certainly ever since the repeal of the acts of restriction. Surely, an undisturbed practice for twenty-eight or thirty years, during which period no tenant in the situation of Satterlee had brought a case of the kind into a court of law, ought alone to settle this question in favour of Matthewson; and to have satisfied the supreme court of Pennsylvania, that the title of the landlord, obtained prior to the intrusion act, could not be contested by his tenant.

But Satterlee became the tenant of Matthewson *prior* to the act of intrusion; and when the law was passed, exempting Matthewson from the effects of the intrusion act; Satterlee was his tenant.

By referring to the act of the 8th of April, it will be found, that its provisions are to apply to the "trial of any *cause*

then pending, or hereafter to be brought;" and it is alleged, that its application to a *cause* in court, proves it to be unconstitutional; and that it wears none of the features of an *explanatory* act. It is not necessary to *call* an act *in its title* an explanatory act, to *make* it so. If in its *design* and *effects* it is explanatory, that is sufficient. If the law of the 8th of April had not applied to the cause *in court* it would not have remedied the evil. This was the *only* cause of the kind that had ever been decided; and the legislature being satisfied that the court had misapprehended the meaning of the law, passed this act by way of explanation.

Again, it has been suggested that this act violates the obligation of a contract, and affects vested rights; because it "does away the force of the law, as decided by the supreme court in this case."

In 15 *Sergeant & Rawle*, our present case, the court say that the case of Overton *vs.* Tracy, reported in 14 *Sergeant & Rawle*, virtually overrules the decision in 13 *Sergeant & Rawle* of Satterlee and Matthewson, which decides that a tenant may resist the title of his Connecticut landlord. So far therefore as the judgment of the supreme court has decided the law, it is in our favour. For it appears, that in the very next volume of reports, a case is decided virtually revoking the former decision. They had no *vested* rights under the first judgment of the court, as it was an erroneous one. This question would have never reached this Court, nor would we have heard of the infringement of vested rights, if the supreme court had not given an incorrect opinion in the first instance.

But let us look at the law, as it stood between Satterlee and Matthewson. Matthewson leased the property in question to Satterlee. It was also agreed that either of the parties might put an end to the tenancy at the end of one year. All this took place when there was no act in existence against Connecticut settlers in Pennsylvania; on the contrary, many of the New England men had gallantly defended the northern borders of the state, where this land is located, from Indian barbarities, and many of them lost their lives there.

Under such circumstances, no one could imagine that the men, who thus exposed themselves all in defence of their settlements, could be driven from them afterwards by honest or upright legislation. Hence we find the assembly of Pennsylvania, in 1784, passed an act for *restoring* possessions from which the Connecticut settlers had been *removed*. 7 *Smith*, 531. And when they enacted the law to prevent *intrusion* from new emigrants, they cautiously and with a just regard for good faith, declare, that their enactments shall not apply to those who resided there *before* the passage of the law. Both Matthewson and Satterlee had been there from ten to twelve years before the act adverted to had been passed. By excluding the *prior* settlers and defenders of the state from the operation of the intrusion act, they virtually passed a law preventing them from disturbance in their possession. And as such, they were entitled to all the benefit of the laws of the state. During this time of peace and quiet, the lease was made; and all the inhabitants of Pennsylvania were subject to the same laws. At that time the tenant could not resist the title of his landlord. He was bound to deliver up possession, if he claimed through or by an outstanding title. We hesitate, therefore, not to say, that the act of the legislature of the 8th of April 1826, violated no contract; but on the contrary it prevented injustice by sustaining a contract, made upon the purest principles of good faith.

Mr Peters, for the defendant, contended that there is nothing in the record to show upon what principles the supreme court of Pennsylvania decided the case, or what in fact was the decision of the court. The facts of the case may be found on the papers which come up with the record, but there is no certificate by the clerk that the same are part of the proceedings of the cause. The certificate signed by the clerk affirms nothing more than the docket entries; and to all the papers in the case the clerk's certificate has no application.

If by the law of Pennsylvania, a judge who tries a cause

is bound to file his opinion, and the same when filed becomes a part of the record; the law enjoins this duty only when the judge *is so required;* and there does not appear to have been any request in this case. 5 *Smith,* 197. Neither does the record show that the paper, which purports to be the opinion of the court, was filed by the judge. Its language would authorise the assertion that it had been drawn up by another. Nor do the exceptions to the charge of the court of common pleas, which were presented before the supreme court, exhibit the particular matters which are presented to this Court as ground of error in the court of Pennsylvania; and if this Court are to consider these exceptions as bringing up the whole charge of the judge of the court of common pleas, they will have to decide upon the relevancy of all the matter in the charge, and to review the same; some of which this Court are not judicially competent to examine.

Thus, therefore, as the charge of the court is not legally upon the record, and there is no exception which is sustained by the actual or certified record, nothing is before the Court in the form of assigned errors, upon which they can form an opinion. Again, unless in the form of instructions to the jury, the opinion or charge of the court can in no case constitute a part of the record.

In Williams *vs.* Norris, 12 *Wheaton,* 117, this point was explicitly decided as has been stated. The law of Tennessee, like that of Pennsylvania, requires the judges to file their opinions, in writing, among the papers of the cause.

We do not deny the right of this Court to decide upon the constitutionality of a law of a state, where the question is fairly and regularly presented for determination, according to the provisions of the act of congress, and the settled rules of this Court; nor that an act of a state is unconstitutional if it impairs the obligation of a contract; nor that the grant of titles to lands by a state, is a contract within the meaning of the constitutional provision.

All the principles claimed by the counsel for the plaintiff in error upon these points, are therefore entirely conceded.

But admitting all these principles, it is submitted, that

this is not such a case as comes within them, or as this Court can judicially notice.

To constitute such a case, it must appear from the record, that the constitutionality of the law of the state has been drawn in question, and that *the decision of the court was in favour of its validity.* Martin *vs.* Hunter's lessee, 1 *Wheaton,* 304. 323. 352.

The judgment of the state court, to be reviewed in this Court, must not only appear to have been on the validity of the legislative act; but it must also appear that the judgment of this Court was upon no other point. If, on the record, it appears that the court of this state *may have* decided upon the rights of the parties before them, without deciding upon the constitutional question, and it is not expressly shown that the judgment was upon the constitutionality of the law *alone,* this Court will not take jurisdiction.

This is in precise harmony with all the principles which have governed this Court, and the course of its proceedings. It always respects the decisions of state courts upon the laws of the state, and reluctantly interferes with them.

This record presents a case in which the judgment of the court may have been upon a question, in which the constitutionality of the law of Pennsylvania, of the 8th of April 1826, was not involved.

Two exceptions were made to the charge of the court of Bradford county, before the supreme court.

1. That by the law of Pennsylvania the plaintiff's testator could lease the land, and that the rights of landlord extended to him.

2. That the act of the 8th of April 1826 gives a right of recovery, and does away the force of the law, as declared by the supreme court.

Under the first proposition the inquiry was, what was the law of Pennsylvania in relation to these parties. They were landlord and tenant, and unless there was a special law exempting them from the obligations of this relation, all the rights of landlord did apply to the defendant in ejectment. The supreme court of Pennsylvania had said in 1825, that this law did not apply. This was the question for the

determination of the supreme court in the present case, and they decided that the former decision of the same court was erroneous.

Had they not a right to overrule the former decision of the court? This will not be denied. That this was the fact and that the court so overruled the former decision, is manifest from the opinion of the court.

Thus it is manifest that the opinion of the supreme court in the case before this Court, was, that by the laws of Pennsylvania the plaintiff's testator could lease the land, and that the rights of landlord did extend to him.

Upon this principle the judgment of the court could have been, and was in favour of the defendant in error; without touching the question of the validity of the law of the 8th of April 1826. And this decision was in conformity with all the principles which had governed the legislature of Pennsylvania, in relation to the Connecticut claimants.

At no period did the legislature deny to those claimants the benefits of all the principles of law, except when the preservation of her own rights, and the performance of her own contracts made it absolutely necessary; and the moment that necessity ceased, she released her restrictions and at length entirely removed them.

The Connecticut settlers had always been indulgently considered by the legislature, until after the decision of the case of Vanhorn's lessee *vs.* Dorance in 1795, 2 *Dall.* 304.

The decree of Trenton in 1783, had settled the jurisdiction over the land to be in Pennsylvania; but until 1795, it was not judicially settled that the right of soil was in Pennsylvania, and that the Connecticut grants were void. After the decree of Trenton violent measures were resorted to by the Pennsylvania claimants to oust the Connecticut settlers.

In 1784 the legislature of the state passed an act to stay and prevent these proceedings. It was at this period that Matthewson settled on the land, under a Connecticut title, but never asserting it under a Pennsylvania title. In 1784, an act offering general amnesty to all those who as Connecticut claimants had violated the peace of the state. In 1787

an act was passed confirming certain Connecticut claims, which act was suspended in 1788, and repealed in 1790.

The title of Pennsylvania to the soil being fully established by the decision of the court in 1795, Vanhorn *vs.* Dorance, the state of Pennsylvania then passed the *intrusion act*, referred to by the plaintiff's counsel.

This law was not *retrospective*. It applied only to settlers after its date. It continued in force until January 1814, when it was repealed. 6 *Smith*, 122.

In 1813 the legislature repealed the law which had suspended the operation of the act of *limitations*, 6 *Smith*, 61; and thus those who came in under Connecticut claims were restored to all the rights of citizens of the state, and to the enjoyment of all the laws of the state. Well therefore might the court in this case reprobate the decision before given, which was against all the spirit of legislation so emphatically declared by the state; and say that it was not law.

That court in the following term, June 1826, had therefore overruled their former decision. Tracy *vs.* Overton, 14 *Serg. & Rawle*, 311. In that case it was held, that an improvement made under a Connecticut title was an object of purchase, and they affirmed the obligation of the mortgagor who had made the purchase.

These views show conclusively that the court thought the supreme court in 1825 was mistaken; and that the law was not as they declared it.

Until the decision of the supreme court of Pennsylvania is overruled, it will be respected by this Court. This is conclusive to the case.

2d point. The counsel for the plaintiff in error say, that the supreme court of Pennsylvania have violated the constitution of the United States, because they have decided, that the act of the 8th of April 1826 gives a right of recovery, and does away the force of the law as declared by the supreme court.

It is no where found on the record that the court have said so.

All that the record contains is, that five errors in the charge of the court of Bradford county were assigned, and

that the court gave judgment for the defendant in that court, he being the plaintiff below.

The language of the exception is such as deserves notice The court are said to have declared that the act of assembly does away the *force* of the law, *as declared by the supreme court.* Not that the act of assembly *does away the law of the land.* This is saying that the act of 1826 was, as in truth it was, a *declaratory* act. There can be no doubt of the right of a legislature to *pass a declaratory act.*

A reference to the opinion of the court will show that this was their decision.

The act of 1826 is said to be unconstitutional, because it impaired a contract: but what is the contract which the counsel assert to be impaired?

The right which settlers had to *the possession* of the land, under the title obtained in 1812 by purchase from Wharton, is said to be affected, and the contract under the patent for the state is said to be impaired. Look at the situation of the parties. They both settled in 1784, or 1785, under a Connecticut title. If neither could acquire any legal possession under that title, they stood in the same situation up to the 10th of January 1812, when Elizabeth Matthewson took out a warrant for the land, and obtained a patent on the 19th of February 1813.

If the warrant and survey under the state of Pennsylvania carries with it a contract for possession, E. Matthewson was to have the benefit of that contract; and the possession of Satterlee being an illegal one, she must be deemed to be in possession.

After this, or after the warrant to Matthewson, Satterlee bought of Wharton a title derived from the commonwealth by patent, in 1781, and which had lain dormant from that time thirty-one years.

He now says that the law of Pennsylvania, of the 8th of April 1826, has divested him of his *possession.* This possession was not a possession which was lawful.

The possession upon which the act of assembly operated, was one which the party could not avail himself of in a court of Pennsylvania. The act of assembly, therefore, in giving

to the heirs of Matthewson the rights of landlord, impaired no part of the contract of the state, under Wharton's patent. It only took away a *disability*, if any existed, as between the two persons who held under the Connecticut possession.

That act left all the rights derived under *Wharton's* patent unimpaired.

Ejectment might have been brought, and may now be brought. And unless the act of 1813 is retrospective, which it cannot be, there is no possession to bar a recovery.

This view puts the case out of all the perils it would stand in, if the law interfered with the rights of Satterlee under the state. It is earnestly presented to the consideration of the Court, that the act of assembly which is said to be unconstitutional by impairing a contract, has no such operation. It leaves the contract of the state under the patent to Wharton untouched, and the plaintiff in error to the assertion of all his rights derived under it. It does no more than declare, that the contract between the plaintiff and defendant, as landlord and tenant, shall operate upon them, and thus it affirms, instead of impairing the obligation of a contract.

From these views it is claimed:

1. That the record does not exhibit a case for the consideration of this Court.

2. The decision of the court of Pennsylvania was upon the general law of the land, and not on the act of assembly.

3. The act of the 8th of April 1826 was a constitutional law, and did not impair, but affirmed a contract which was lawful; and has been since declared to have been so, by the highest judicial authority of the state.

Mr Sergeant, in reply.

1. As to the jurisdiction of the Court to entertain a writ of error in this case under the 25th section of the judiciary act.—It appears that, in the court of common pleas, the act of the 8th of April 1806 was relied upon by the plaintiff below. The court charged the jury that it was a binding act. To this charge the defendant excepted, and the judge signed and sealed the bill of exceptions. Was this error?

If it was, the court above, by affirming the judgment, adopted the error, and affirmed the constitutionality of the law. That it was material to the decision, cannot be doubted, but the proof of its materiality does not lie upon the plaintiff. The rule upon this subject is laid down with great precision in Etting *vs.* Bank of the United States, 11 *Wheat.* 59. "But if he (the judge) proceed to state the law" (though not bound to do it), "and state it erroneously, his opinion ought to be revised, and if it *can* have had *any* influence on the jury, their verdict ought to be set aside." It is necessary, therefore, for those who allege that an erroneous opinion of a judge in his charge to a jury, is not examinable in error, to show that it could not have had any influence on the jury.

But it is manifest that the opinion expressed in the court of common pleas, that the act of assembly was a binding act, had a decisive influence on the issue of the cause. It cut off all defence, by making the defendant tenant of the plaintiff. It was so considered by court and counsel; and it was the very ground of reversal of the previous judgment. 13 *Serg. & Rawle*, 133.

The exceptionable opinion thus expressed, sufficiently appears. It was filed of record, which in Pennsylvania is sufficient to subject it to revision in the superior court. Downing *vs.* Baldwin, 1 *Serg. & Rawle*, 298. It is set out, too, in a bill of exceptions signed and sealed by the judge. The supreme court, therefore, could not avoid passing upon it. They did pass upon it; and thus it became a final decision of the "highest court" in the state, to which a writ of error lies from this Court.

Does it sufficiently appear that the constitution of the United States came in question? This is the only remaining inquiry under this head, and it is settled by decisions heretofore made. It is not necessary, to found the jurisdiction, that it should appear that the constitution, or an act of congress, or a treaty, was insisted upon. It is sufficient, if it be seen that either of them was applicable to the case. Miller *vs.* Nichols, 4 *Wheat.* 311. Williams *vs.* Norris, 12 *Wheat.* 124. Hickey *vs.* Starkie, 1 *Peters*, 98. But it is

very apparent, that the unconstitutionality of the act was insisted upon in both courts. The charge was excepted to in the common pleas, on the ground that it stated the act to be binding. In the supreme court, it was evidently presented in the first and second errors assigned. It appears, also, that the suit was brought in 1817, so that the act passed after the commencement of the action; and it further appears from the charge, what the former decision had been upon the same alleged lease, before the act was passed. The judge decided (and the supreme court of Pennsylvania affirmed the decision), that the court and jury were bound by the act. If it was unconstitutional, it was no law, and they were not bound by it. He therefore decided that it was not unconstitutional. The question is thus directly brought before this Court, and it is the only question in the record which is examinable here.

2. Is this act then a constitutional act, consistent with the constitution of the United States? Before the act passed, there was no subsisting lease between the parties. The act created one. Satterlee *vs.* Matthewson, 13 *Serg. & Rawle*, 133. It was impossible that any valid lease could be derived from, or founded upon a Connecticut title. That title was from the beginning adverse to the sovereignty of Pennsylvania, was maintained by force, was treated by the laws of Pennsylvania as hostile, and its assertion as criminal. For proof of this position, he referred to the history of the controversy, the decree of Trenton which settled the right, and the various laws of Pennsylvania which prohibited, under severe penalties, every form of Connecticut title, of derivation from it, or possession under it. He referred also to judicial decisions, to show that every contract growing out of it was void, and especially to Mitchell *vs.* Smith, 1 *Binn.* 110, and the preamble of the act of 1802, 3 *Smith*, 525. The period of settlement or claim under that title made no difference. The act of 1795, it was true, gave peculiar powers, in certain cases, to punish and remove certain intruders. But all were intruders, not upon private right merely, but upon the state sovereignty, who came in or

continued, under pretence of Connecticut right; and as such they were public disturbers, obnoxious to public chastisement. So, they were always considered, both in the legislation and in the judicial decisions of Pennsylvania. Overton *vs.* Tracy, 14 *Serg. & Rawle*, 311, was not to the contrary. It only decided that it was not unlawful and criminal for the owner of a Pennsylvania title voluntarily to pay a Connecticut settler for his improvements. That case admits that it would be unlawful to buy the title.

Independently then of the act in question, there could be no relation of landlord and tenant, because there could be no valid lease. The act creates the relation in a pending suit. It was a law to alter the rights of property between individuals without their consent, so as to give to one a right to recover from the other which he had not before. It works this result, by making a new rule to govern between the parties, so that A. shall be enabled by means of it to recover the property of B. In other words, it enables A. to turn B. out of the possession of his freehold. This is precisely equivalent to a law declaring that A. shall have B.'s property without his consent. Such a law, penned in plain terms, would excite universal abhorrence in every one who has the least feeling of respect for individual rights. It is not the less dangerous and objectionable, for being more indirectly accomplished.

This act does not profess to be declaratory. If it did, it would still be objectionable. To expound laws is a judicial, and not a legislative function. Ogden *vs.* Blackledge, 2 *Cranch*, 277. But, admitting the law to be as it had been laid down by the supreme court, it changes the law, as to existing cases, so as to divest vested rights. To do this, it makes that rightful and valid which before was wrongful and void. It creates a lease where none before existed. It makes one a landlord and the other a tenant, creating for each the capacities and disabilities belonging to that character. It carries this back for thirty-five years. It thus makes A.'s possession the possession of B.; and introduces the statute of limitations as a bar. Thus, it creates lease,

tenancy, possession, bar, and completely changes the whole case. The effect is precisely this, that Satterlee shall have no defence in the pending suit.

This cannot be called judicial legislation. It is neither judgment nor legislation, but more. Neither does it merely exercise appellate power. It makes a case for a party to insure a recovery in an existing case. It is an exercise of power, neither legislative, executive or judicial, but arbitrary. The intention of the legislature is not material. The time when this act was passed, a few days before the end of the session, warrants a belief that it was not much considered. But, though the legislature did not so intend, it was clearly devised for this very case. The haste with which it was carried to the common pleas of Bradford county, immediately after it was passed, and before the laws of the session could have been published, is proof of its design. It was meant for this case.

Is such an act constitutional?

1. It is a violation of contract. In 1781, the state sold the land to Mr Wharton, who paid for it; and granted him by patent an estate in fee simple. In 1812, he sold to John F. Satterlee, who succeeded to all his rights. Thus, Satterlee held by contract of the state who sold the land. Could the state resume the grant? No. Fletcher *vs.* Peck, 6 *Cranch*, 57. 131. If the state could not resume the grant, could she grant it to another? That would, in fact, be a resumption; for she could not grant without assuming the dominion over the land. Such a proceeding is entirely indefensible, and is used as the strongest illustration of what rightful legislation cannot accomplish, by Justice Patterson in Vanhorne *vs.* Dorrance, 2 *Dall.* 304, and Justice Chase in Calder *vs.* Bull, 3 *Dall.* 356.

Can the state, then, rightfully resume any part of the dominion over the land? The answer is implied in the universality of the former proposition. She has parted with the whole. To resume a part violates the contract of sale as much as to resume the whole. Can the state grant any part of it? Certainly not. Can she, by her mere authority, impose upon it any incumbrance? subject it to mortgage,

judgment or lease? Can the state alter the relation of the owner to his property, or make him less than an owner, or less than a tenant in fee simple? Can she, directly or indirectly, deprive him of his title, his possession, or right of possession? Either is inconsistent with the grant, and a violation of the contract. These deductions are all legitimately and unavoidably made from the first principle. Now, this act of assembly does take from the owner his possession and his right of possession, and transfers them to another. It, therefore, violates the contract and transcends the just powers of legislation. If this can be done, what limit shall be assigned to the power? The truth is, that the act gives Matthewson a title. *That* is its effect. It takes away the right of Satterlee. It is the same exercise of power, as to declare that a valid lease should be void, or a younger grant better than an older one.

2. It is retrospective and ex post facto. There are three provisions in the constitution which, in defining the limits of legislative power, ought to be taken together:—The guarantee of a republican government, in the 4th section of the 4th article, which secures the distribution of legislative, executive and judicial authority; the prohibition to the states of the power to pass bills of attainder, ex post facto laws and laws impairing the obligation of contracts, in the 10th section of the 5th article; and the fifth amendment, restricting the exercise of the power of the eminent domain. They were intended, together, effectually to secure the political and civil rights of the citizen, and to protect from legislative encroachment. They ought always to be liberally construed in favour of the rights of the citizen. Opinion of Judge Johnson, 12 *Wheaton*, 256. These provisions were intended to be equal and invariable in their operation, and to embrace all cases of unjust legislation affecting the property or liberty of individuals. Retrospective laws are always unjust, and are contrary to the fundamental principles of our social compact. In these clauses of the constitution, regard must be had to the spirit. Suppose a law were to declare a valid lease void. This would impair the obligation of the contract between the parties. Suppose a law to declare a void

lease valid. Precisely the same injustice is done. Will the constitution be satisfied with a distinction between them, when there is no difference? The spirit of the constitution abhors it. Private property cannot be taken, even for public use, without full compensation and process of law. To affect the rights of property in any other way, was deemed to be beyond the power of legislation, and therefore the guard is applied to the taking for public use. The other parts of the constitution had done the rest.

Retrospective laws, violating the rights of property, are contrary to the contract of any society established upon a republican basis. They not only impair, they break it. The great object of our constitution is to preserve individual rights, not to destroy them. There is no power in the government but what is given for this end. The freedom of the citizen, the enjoyment of his own without disturbance or interference, are what constitute his happiness; and in a government where that is consulted, constitute his rights. They are sacred, and ought not to be interfered with.

Mr Justice WASHINGTON delivered the opinion of the Court.

This is a writ of error to the supreme court of Pennsylvania. An ejectment was commenced by the defendant in error in the court of common pleas against Elisha Satterlee to recover the land in controversy, and upon the motion of the plaintiff in error, he was admitted as her landlord, a defendant to the suit. The plaintiff, at the trial, set up a title under a warrant dated the 10th of January 1812, founded upon an improvement in the year 1785, which it was admitted was under a Connecticut title, and a patent bearing date the 19th of February 1813.

The defendant claimed title under a patent issued to Wharton in the year 1781, and a conveyance by him to John F. Satterlee in April 1812. It was contended on the part of the plaintiff, that admitting the defendant's title to be the oldest and best, yet he was stopped from setting it up in that suit, as it appeared in evidence that he had come into possession as tenant to the plaintiff sometime in the year

1790. The court of common pleas decided in favour of the plaintiff upon the ground just stated, and judgment was accordingly rendered for her. Upon a writ of error to the supreme court of that state, that court decided, in June 1825, 13 *Serg. & Rawle*, 133, that by the settled law of Pennsylvania, the relation of landlord and tenant could not subsist under a Connecticut title; upon which ground the judgment was reversed and a venire facias de novo was awarded.

On the 8th of April 1826, and before the second trial of this cause took place, the legislature of that state passed a law in substance as follows, viz. "that the relation of landlord and tenant shall exist, and be held as fully and effectually between Connecticut settlers and Pennsylvania claimants, as between other citizens of this commonwealth, on the trial of any cause now pending, or hereafter to be brought within this commonwealth, any law or usage to the contrary notwithstanding."

Upon the retrial of this cause in the inferior court in May 1826, evidence was given conducing to prove, that the land in dispute was purchased of Wharton by Elisha Satterlee, the father of John F. Satterlee, and that by his direction, the conveyance was made to the son. It further appeared in evidence, that the son brought an ejectment against his father in the year 1813, and by some contrivance between those parties, alleged by the plaintiff below to be merely colourable and fraudulent, for the purpose of depriving her of her possession, obtained a judgment and execution thereon, under which the possession was delivered to the plaintiff in that suit, who immediately afterwards leased the premises to the father for two lives, at a rent of one dollar per annum. The fairness of the transactions was made a question on the trial, and it was asserted by the plaintiff that, notwithstanding the eviction of Elisha Satterlee under the above proceedings, he still continued to be her tenant.

The judge, after noticing in his charge the decision of the supreme court in 1825, and the act of assembly before recited, stated to the jury the general principle of law, which prevents a tenant from controverting the title of his

landlord by showing it to be defective, the exception to that principle where the landlord claims under a Connecticut title, as laid down by the above decision, and the effect of the act of assembly upon that decision, which act he pronounced to be binding on the Court. He therefore concluded, and so charged the jury, that if they should be satisfied from the evidence, that the transactions between the two Satterlees before mentioned, were bona fide, and that John F. Satterlee was the actual purchaser of the land; then the defendants might set up the eviction as a bar to the plaintiff's recovery as landlord. But that if the jury should be satisfied that those transactions were collusive, and that Elisha Satterlee was in fact the real purchaser, and the name of his son inserted in the deed for the fraudulent purpose of destroying the right of the plaintiff as landlord; then the merely claiming under a Connecticut title, would not deprive her of her right to recover in that suit.

To this charge, of which the substance only has been stated, an exception was taken, and the whole of it is spread upon the record. The jury found a verdict for the plaintiff; and judgment being rendered for her, the cause was again taken to the supreme court by a writ of error.

The only question which occurs in this cause, which it is competent to this Court to decide is, whether the statute of Pennsylvania which has been mentioned, of the 8th of April 1826, is or is not objectionable, on the ground of its repugnancy to the constitution of the United States? But before this inquiry is gone into, it will be proper to dispose of a preliminary objection made to the jurisdiction of this Court, upon the ground that there is nothing apparent on this record to raise that question, or otherwise to bring this case within any of the provisions of the 25th section of the judiciary act of 1789.

Questions of this nature have frequently occurred in this Court, and have given occasion for a critical examination of the above section, which has resulted in the adoption of certain principles of construction applicable to it, by which the objection now to be considered may, without much difficulty, be decided. 2 *Wheaton*, 363. 4 *Wheaton*, 311. 12

Wheaton, 117. One of those principles is, that if it sufficiently appear from the record itself, that the repugnancy of a statute of a state to the constitution of the United States was drawn into question, or that that question was applicable to the case, this Court has jurisdiction of the cause under the section of the act referred to; although the record should not, in terms, state a misconstruction of the constitution of the United States, or that the repugnancy of the statute of the state to any part of that constitution was drawn into question.

Now it is manifest from this record, not only that the constitutionality of the statute of the 8th of April 1826, was drawn into question, and was applicable to the case, but that it was so applied by the judge, and formed the basis of his opinion to the jury, that they should find in favour of the plaintiff, if in other respects she was entitled to a verdict. It is equally manifest that the right of the plaintiff to recover in that action depended on that statute; the effect of which was to change the law, as the supreme court had decided it to be in this very case in the year 1825. 13 *S. & R.* 133.

That the charge of the judge forms a part of this record is unquestionable. It was made so by the bill of exceptions, and would have been so without it, under the statute of the 24th of February 1806, of that state; which directs, that in all cases in which the opinion of the court shall be delivered, if either party require it, it is made the duty of the judges to reduce the opinion, with their reasons therefor, to writing, and to file the same of record in the cause. In the case of Downing *vs.* Baldwin, 1 *Serg. & Rawle*, 298, it was decided by the supreme court of Pennsylvania, that the opinion so filed becomes part of the record, and that any error in it may be taken advantage of on a writ of error without a bill of exceptions.

It will be sufficient to add that this opinion of the court of common pleas was, upon a writ of error, adopted and affirmed by the supreme court; and it is *the judgment* of that court upon the point so decided by the inferior court; and not the *reasoning of the judges* upon it, which this Court is now called upon to revise.

We come now to the main question in this cause. Is the

act which is objected to, repugnant to any provision of the constitution of the United States? It is alleged to be so by the counsel for the plaintiff in error, for a variety of reasons; and particularly, because it impairs the obligation of the contract between the state of Pennsylvania and the plaintiff who claims title under her grant to Wharton, as well as of the contract between Satterlee and Matthewson; because it creates a contract between parties where none previously existed, by rendering that a binding contract which the law of the land had declared to be invalid; and because it operates to divest and destroy the vested rights of the plaintiff. Another objection relied upon is, that in passing the act in question, the legislature exercised those functions which belong exclusively to the judicial branch of the government.

Let these objections be considered. The grant to Wharton bestowed upon him a fee simple estate in the land granted, together with all the rights, privileges and advantages which, by the laws of Pennsylvania, that instrument might legally pass. Were any of those rights, which it is admitted vested in his vendee or alienee, disturbed, or impaired by the act under consideration? It does not appear from the record, or even from the reasoning of the judges of either court, that they were in any instance denied, or even drawn into question. Before Satterlee became entitled to any part of the land in dispute under Wharton, he had voluntarily entered into a contract with Matthewson, by which he became his tenant, under a stipulation that either of the parties might put an end to the tenancy at the termination of any one year. Under this new contract, which, if it was ever valid, was still subsisting and in full force at the time when Satterlee acquired the title of Wharton, he exposed himself to the operation of a certain principle of the common law, which estopped him from controverting the title of his landlord, by setting up a better title to the land in himself, or one outstanding in some third person.

It is true that the supreme court of the state decided, in the year 1825, that this contract, being entered into with a person claiming under a Connecticut title, was void; so that

the principle of law which has been mentioned did not apply to it. But the legislature afterwards declared by the act under examination, that contracts of that nature were valid, and that the relation of landlord and tenant should exist, and be held effectual, as well in contracts of that description, as in those between other citizens of the state.

Now this law may be censured, as it has been, as an unwise and unjust exercise of legislative power; as retrospective in its operation; as the exercise, by the legislature, of a judicial function; and as creating a contract between parties where none previously existed. All this may be admitted; but the question which we are now considering is, does it impair the obligation of the contract between the state and Wharton, or his alienee? Both the decision of the supreme court in 1825, and this act, operate, not upon that contract, but upon the subsequent contract between Satterlee and Matthewson. No question arose, or was decided, to disparage the title of Wharton, or of Satterlee as his vendee. So far from it, that the judge stated in his charge to the jury, that if the transactions between John F. Satterlee and Elisha Satterlee were fair, then the elder title of the defendant must prevail, and he would be entitled to a verdict.

We are then to inquire, whether the obligation of the contract between Satterlee and Matthewson was impaired by this statute? The objections urged at the bar, and the arguments in support of them, apply to that contract, if to either. It is that contract which the act declared to be valid, in opposition to the decision of the supreme court; and admitting the correctness of that decision, it is not easy to perceive how a law which gives validity to a void contract, can be said to impair the obligation of that contract. Should a statute declare, contrary to the general principles of law, that contracts founded upon an illegal or immoral consideration, whether in existence at the time of passing the statute, or which might hereafter be entered into, should nevertheless be valid and binding upon the parties; all would admit the retrospective character of such an enactment, and that the effect of it was to create a contract between parties

where none had previously existed. But it surely cannot be contended, that to create a contract, and to destroy or impair one, mean the same thing.

If the effect of the statute in question, be not to impair the obligation of either of those contracts, and none other appear upon this record, is there any other part of the constitution of the United States, to which it is repugnant? It is said to be retrospective. Be it so; but retrospective laws which do not impair the obligation of contracts, or partake of the character of ex post facto laws, are not condemned or forbidden by any part of that instrument.

All the other objections which have been made to this statute, admit of the same answer. There is nothing in the constitution of the United States, which forbids the legislature of a state to exercise judicial functions. The case of Ogden *vs.* Blackledge came into this Court from the *circuit court* of the United States, and not from the supreme court of North Carolina; and the question, whether the act of 1799, which partook of a judicial character, was repugnant to the constitution of the United States, did not arise, and consequently was not decided. It may safely be affirmed, that no case has ever been decided in this Court, upon a writ of error to a state court, which affords the slightest countenance to this objection.

The objection however which was most pressed upon the court, and relied upon by the counsel for the plaintiff in error, was, that the effect of this act was to divest rights which were vested by law in Satterlee. There is certainly no part of the constitution of the United States which applies to a state law of this description; nor are we aware of any decision of this, or of any circuit court, which has condemned such a law upon this ground; provided its effect be not to impair the obligation of a contract; and it has been shown, that the act in question has no such effect upon either of the contracts which have been before mentioned.

In the case of Fletcher *vs.* Peck, it was stated by the chief justice, that it might well be doubted, whether the nature of society and of government do not prescribe some limits to the legislative power; and he asks, "if any be pre-

scribed, where are they to be found, if the property of an individual, fairly and honestly acquired, may be seized without compensation?" It is no where intimated in that opinion, that a state statute, which divests a vested right, is repugnant to the *constitution of the United States;* and the case in which that opinion was pronounced, was removed into this Court by writ of error, not from the supreme court of a state, but from a circuit court.

The strong expressions of the Court upon this point, in the cases of Vanhorne's lessee *vs.* Dorance, and The Society for the Propagation of the Gospel *vs.* Wheeler, were founded expressly on the constitution of the respective states in which those cases were tried.

We do not mean in any respect to impugn the correctness of the sentiments expressed in those cases, or to question the correctness of a circuit court, sitting to administer the laws of a state, in giving to the constitution of that state a paramount authority over a legislative act passed in violation of it. We intend to decide no more than that the statute objected to in this case is not repugnant to the *constitution of the United States*, and that unless it be so, this Court has no authority, under the 25th section of the judiciary act, to re-examine and to reverse the judgment of the supreme court of Pennsylvania in the present case.

That judgment therefore must be affirmed with costs.

Mr Justice Johnson.—I assent to the decision entered in this cause, but feel it my duty to record my disapprobation of the ground on which it is placed. Could I have brought myself to entertain the same view of the decision of the supreme court of Pennsylvania, with that which my brethren have expressed, I should have felt it a solemn duty to reverse the decision of that court, as violating the constitution of the United States in a most vital part.

What boots it that I am protected by that constitution from having the obligation of my contracts violated, if the legislative power can *create* a contract for me, or render binding upon me a contract which was null and void in its creation? To give efficacy to a *void* contract, is not, it

is true, *violating* a contract, but it is doing infinitely worse; it is advancing to the very extreme of that class of arbitrary and despotic acts, which bear upon individual rights and liabilities, and against the whole of which the constitution most clearly intended to interpose a protection commensurate with the evil.

And it is very clear to my mind, that the cause here did not call for the decision now rendered. There is another, and a safe and obvious ground upon which the decision of the Pennsylvania court may be sustained.

The fallacy of the argument of the plaintiff in error consists in this, that he would give to the decision of a court, on a point arising in the progress of his cause, the binding effect of a statute or a judgment; that he would in fact restrict the same court from revising and overruling a decision which it has once rendered, and from entering a different judgment, from that which would have been rendered in the same court, had the first decision been adhered to. It is impossible in examining the cause, not to perceive that the statute complained of was no more than declarative of the law on a point on which the decisions of the state courts had fluctuated, and which never was finally settled until the decision took place on which this writ of error is sued out.

The decision on which he relies, to maintain the invalidity of the Connecticut lease, was rendered on a motion for a new trial; all the right it conferred was to have that new trial; and it even appears that before that new trial took place, the same court had decided a cause, which in effect overruled the decision on which he now rests; so that when this act was passed, he could not even lay claim to that imperfect state of right, which uniform decisions are supposed to confer. The latest decision in fact, which ought to be the precedent if any, was against his right.

It is perfectly clear, when we examine the reasoning of the judges on rendering the judgment now under review, that they consider the law as unsettled, or rather, as settled against the plaintiff here at the time the act was passed; and if so, what right of his has been violated? The act does no more than what the courts of justice had done, and

would do without the aid of the law; pronounce the decision on which he relies as erroneous in principle, and not binding in precedent.

The decision of the state court is supported under this view of the subject, without resorting to the portentous doctrine (for I must call it portentous), that a state may declare a void deed to be a valid deed, as affecting individual litigants on a point of right, without violating the constitution of the United States. If so, why not create a deed, or destroy the operation of a limitation act after it has vested a title?

The whole of this difficulty arises out of that unhappy idea, that the phrase "ex post facto," in the constitution of the United States, was confined to criminal cases exclusively; a decision which leaves a large class of arbitrary legislative acts without the prohibitions of the constitution. It was in anticipation of the consequences, that I took occasion in the investigations on the bankrupt question, to make a remark on the meaning of that phrase in the constitution. My subsequent investigations have confirmed me in the opinion then delivered, and the present case illustrates its correctness; I will subjoin a note(*a*) to this opinion devoted to the examination of that question.

This cause came on to be heard on the transcript of the record from the supreme court of the state of Pennsylvania for the middle district of Pennsylvania, and was argued by counsel; on consideration whereof, it is considered, ordered, and adjudged by this Court, that the judgment of the said supreme court for the state of Pennsylvania in this cause be, and the same is hereby affirmed with costs.

(*a*) For this note see the end of the volume.